

FILED
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

7/21/2020 8:16 am

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

-----X **Docket#**
UNITED STATES OF AMERICA, : 17-cr-00495-ADS-SIL-1
: :
- versus - : U.S. Courthouse
: Central Islip, New York
: :
DANIEL MULLAN, : June 17, 2020
Defendant : 12:30 PM
-----X

TRANSCRIPT OF CRIMINAL CAUSE
FOR TELEPHONE STATUS CONFERENCE
BEFORE THE HONORABLE STEVEN I. LOCKE
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Government:

Richard P. Donoghue, Esq.
United States Attorney

BY: **Michael R. Maffei, Esq.**
Assistant U.S. Attorney
100 Federal Plaza
Central Islip, NY 11722

For the Defendant:

Nancy Lynn Bartling, Esq.
LaRusso & Conway, LLP
300 Old Country Road
Suite 341
Mineola, NY 11501

Transcription Service:

Transcriptions Plus II, Inc.
61 Beatrice Avenue
West Islip, New York 11795
laferrara44@gmail.com

Proceedings recorded by electronic sound-recording,
transcript produced by transcription service

Proceedings

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE CLERK: Calling case 17-cr-0495, United States v. Daniel Mullan.

Counsel, please state your appearance.

MR. MAFFEI: Assistant United States Attorney Michael Maffei for the government.

Good afternoon.

THE COURT: Good afternoon.

MS. BARTLING: Good afternoon, your Honor.

For Mr. Mullan, Nancy Bartling.

THE COURT: Good afternoon. All right.

I think we're just here for a status conference; is that right?

MR. MAFFEI: That is correct, your Honor. We had been scheduled to appear on Monday, the 15th for a status before Judge Spatt. Obviously, given Judge Spatt's passing, we are unable to do that, and I want to extend my condolences to the Court for obviously a loss of one of its more distinguished jurists.

But I do appreciate your Honor being able to accommodate us on short notice because we did have some issues related to Mr. Mullan's case that we did think was just better to put on the record.

THE COURT: Okay. Well, I appreciate the condolences. Certainly, let's lay out what you need. My

Proceedings

1 understanding is under the most recent Administrative
2 Order, speedy trial is waived until 2020.

3 Before we get started though, Mr. Mullan, are
4 you on the phone?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay.

7 THE DEFENDANT: Yes.

8 THE COURT: Mr. Mullan, I want to make sure
9 that you've had a chance to speak with your counsel, and
10 that you are consenting to proceed by phone rather than
11 video or in person.

12 Have you had a chance to speak with your lawyer
13 about this?

14 THE DEFENDANT: She told me what was today --
15 yeah, she called -- she told me some of it. I don't know
16 all of it, but yes.

17 THE COURT: Okay. Well, do you want to speak
18 with your lawyer about this some more, and then we can
19 get back on the phone later or --

20 MS. BARTLING: Dan --

21 THE COURT: -- are you prepared to proceed by
22 phone?

23 THE DEFENDANT: Well --

24 MS. BARTLING: -- are you okay appearing by
25 phone for this conversation, Dan?

Proceedings

1 THE DEFENDANT: Yeah, yeah.

2 MS. BARTLING: Remember, I just explained to
3 you --

4 THE DEFENDANT: That's fine.

5 MS. BARTLING: -- it's just to waive the speedy
6 trial time.

7 THE DEFENDANT: This is fine. I'm okay.

8 MS. BARTLING: Are you okay with that for this
9 call?

10 THE DEFENDANT: For the call, yes.

11 MS. BARTLING: Okay.

12 THE COURT: Okay. All right. Let's proceed.
13 Before we get to the speedy trial, does everyone -- first
14 of all, actually with respect to speedy trial, is
15 everybody on the same page that Administrative Order
16 2020-20 waives speedy trial under September 14th --

17 MR. MAFFEI: Yes, your Honor.

18 THE COURT: Under 506?

19 MS. BARTLING: Yes, your Honor.

20 THE COURT: Okay. Ms. -- all right, so we're
21 on the same page as that, and I certainly agree with
22 everything in the order, given the emergency that we're
23 all facing, it's appropriate for speedy trial to be
24 waived.

25 Let me ask Mr. Mullan a couple of questions in

Proceedings

1 this regard. Mr. Mullan, do you understand that in
2 ordinary circumstances, you have a right to have a trial,
3 or have this matter disposed of within 70 days of your
4 indictment?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. And what we're doing today,
9 really I guess all it appears is all sides are making an
10 application to extend that period of time, so that the
11 time from today, June 16th until September 14th, does not
12 count against those 70 days; do you understand that?

13 THE DEFENDANT: Yeah, yes, yes.

14 THE COURT: Okay. And have you had a chance to
15 speak with your lawyer about this?

16 MS. BARTLING: Do you understand that, Dan?
17 This is the same waiver we've been signing --

18 THE DEFENDANT: Right.

19 MS. BARTLING: -- the last time before Judge
20 Spatt. Do you understand?

21 THE DEFENDANT: But I haven't spoke to you yet.

22 MS. BARTLING: Regard -- this is regarding --
23 again, Dan, I don't want to talk to you about your case
24 but remember --

25 THE DEFENDANT: Yes.

Proceedings

1 MS. BARTLING: -- this is regarding the speedy
2 trial that we've been signing since obviously we can't
3 proceed to trial under the circumstances right now --

4 THE DEFENDANT: Right, okay.

5 MS. BARTLING: -- and you're just explaining to
6 the judge just that you're okay with signing a waiver,
7 and not proceeding to a trial right now because in
8 effect, there's also an executive order stopping that
9 from happening right now based on the COVID-19 situation.

10 THE DEFENDANT: Okay.

11 MS. BARTLING: Do you understand that?

12 THE DEFENDANT: Yeah, fine. Okay. Go ahead.
13 Yes.

14 THE COURT: Okay. So do you understand that
15 then you and the government are making an application to
16 extend that period of time?

17 THE DEFENDANT: Yes.

18 THE COURT: So that -- okay. All right. And I
19 don't have a proposed order to that effect, but that's
20 okay under the circumstances, and I find that the
21 extension of time certainly serves intended interest of
22 justice but given the nature of things in the executive
23 order, we're going to order the speedy trial be waived
24 from today until September 14th.

25 Now Mr. Maffei suggested that there are other

Proceedings

1 issues we should get on the record and that sounds to me,
2 so let's do it. What do we got to talk about?

3 MR. MAFFEI: So your Honor, it's more of a just
4 -- it sort of dovetails a little into the speedy trial
5 exclusion as well.

6 THE DEFENDANT: Okay.

7 MR. MAFFEI: Back when the case was pending
8 before Judge Spatt, there was essentially a joint
9 application between defense counsel and myself, for a
10 competency exam for Mr. Mullan. During the pendency of
11 the COVID-19 pandemic, it became very clear that BOP was
12 not going to be able to accommodate Mr. Mullan for that
13 exam because the Court may not be aware, Mr. Mullan is, I
14 believe eighty-years-old and due to some physical
15 conditions, and not being housed at the MDC, or at a
16 hospital at this point, but is in a long-term nursing
17 care center in the Bronx.

18 So what we went back to Judge Spatt
19 approximately, I want to say it was early May, and we
20 sought an additional order for a competency exam naming a
21 specific service provider that the parties agreed upon,
22 who was willing to go do that examination, and then under
23 the circumstances, was willing to go to the nursing home
24 in the Bronx and take all the necessary COVID
25 precautions, and then conduct the examination.

Proceedings

1 I have informed Ms. Bartling that I was
2 informed by the medical health professional that they
3 were able to compete the examination, and that they are
4 in the process of preparing their report as to whether or
5 not Mr. Mullan is competent to stand trial, and we do
6 anticipate getting that report hopefully in the next two
7 to three weeks, and so I think there's also a statutory
8 exclusion due to the ongoing competency proceedings, but
9 I did just want to put that on the record in light of
10 sort of everything that's going on.

11 THE COURT: Well --

12 MR. MAFFEI: Other than that I would just ask
13 the Court's permission perhaps to advance the case from
14 the September 14th date, to a date set by a district
15 court judge, once we have the matter reassigned to a
16 district court judge, just again to sort of bring them
17 up-to-speed, but I did just want to make sure that these
18 items were sort of placed on the record because we were
19 sort of in a position where we to report back to Judge
20 Spatt on Monday, sort of where we stood, and I felt that
21 that report should still be made, given kind of the
22 multitude of things going on at this time with this case,
23 and especially where Mr. Mullan is not being brought to
24 court from the medical care facility for multiple
25 reasons, including the COVID pandemic.

Proceedings

1 THE COURT: Okay. Ms. Bartling, agreed,
2 disagree, something to add?

3 MS. BARTLING: Agreed. Agree with it all,
4 Judge, yes.

5 THE COURT: Okay. I think that makes sense,
6 and yeah, there is a statutory exclusion because
7 theoretically, if you're not competent, you can't waive
8 time, but of course the waiver of time is not only
9 knowing and voluntary in this case, but it's also a bit
10 sua sponte due to the emergency. So it makes sense to at
11 least put it on the record in any event.

12 In terms of having conference in advance, once
13 a district judge is assigned, I think that makes sense.
14 That would probably be on you, Mr. Maffei to reach out
15 to the judge once you have one.

16 MR. MAFFEI: Absolutely, your Honor. I just
17 didn't know --

18 THE COURT: I (indiscernible) --

19 MR. MAFFEI: -- given that we don't have one,
20 if I would need to seek permission, or obviously if that
21 would just be a matter of course to let them know that
22 we're seeking a conference.

23 THE COURT: I would think it would be -- it
24 will happen organically. If for some reason, you're
25 concerned about time, well yeah, you can always go to the

Proceedings

1 miscellaneous judge, I am sure if you just need to have a
2 conference --

3 MR. MAFFEI: Yes, Judge.

4 THE COURT: -- for some reason to get an order.

5 The only other question I have for you, and you
6 can proceed however you decide, is do you want us to
7 schedule another status conference, just so that you're
8 on somebody's calendar, and we can always cancel it or do
9 you want to --

10 MR. MAFFEI: Yeah, I would prefer that, Judge,
11 just because my thought is, and I guess Ms. Bartling
12 could say if she agrees or not, but I think once we get
13 that report back, depending on the findings, there may
14 need to be a finding made by a district court, so I think
15 we should keep it on some sort of a calendar, so-to-
16 speak. Perhaps if we could get a mid-July date, and then
17 if we need to advance, because we get a report before
18 that, we would do that.

19 MS. BARTLING: I (audio interference) --

20 THE COURT: Okay, Ms. Bartling, what do you
21 say?

22 MS. BARTLING: Yeah, that's fine with (audio
23 interference).

24 THE COURT: Okay. Kristin, what do we have in
25 the third week in July?

Proceedings

1 THE CLERK: We can do -- is the last week okay?

2 MR. MAFFEI: That's fine.

3 THE COURT: Okay, what do we got?

4 MS. BARTLING: I'm going to be unavailable --
5 I'm available the Thursday and Friday, if you're going to
6 do the last week, the 30th and 31st. I don't know if you
7 are.

8 THE CLERK: How about the 30th.

9 MS. BARTLING: That's fine.

10 THE CLERK: At noon?

11 MR. MAFFEI: 30th, at noon?

12 THE CLERK: Uh-hum.

13 MR. MAFFEI: That works for the government.

14 THE COURT: At 12.

15 MS. BARTLING: That's fine with me, as well.

16 THE COURT: Okay. All right. So we'll speak
17 at the end of July.

18 MR. MAFFEI: Thank you very much, your Honor.

19 THE COURT: All right. Have a good day
20 everybody.

21 MS. BARTLING: Take care.

22 (Matter Concluded)

23 -o0o-

24

25

C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 20th day of July, 2020.


Linda Ferrara

AAERT CET 656

Transcriptions Plus II, Inc.